

**FEDERAL
REQUIREMENTS**

Federal law requires Michigan to have a procedure for use when the state knows of a child support debtor's possible fraudulent transfer. The state must either take action to:

1. Void the transfer, **or**
2. Obtain a settlement in the best interest of the obligee.

The state must also pass the Uniform Fraudulent Transfer Act.

**STATE
REQUIREMENTS**

The state enacted the Uniform Fraudulent Transfer Act, MCL 566.31 et. seq.; PA 434 of 1998. The act defines and regulates fraudulent transfers and includes steps to set aside or modify certain transfers. Relief under the act includes:

1. One or more of the following:
 - An avoidance of the transfer;
 - An attachment against the asset transferred;
 - Subject to the rules of equity, court rules and statutes, one or more of the following:
 - An injunction against further disposition;
 - An appointment of a receiver;
 - Any other relief the court determines appropriate.
2. Levy execution on the asset transferred or its' proceeds.

When the Friend of the Court (FOC) has reason to believe the transfer was made without fair consideration by a payer with an arrearage, the law requires the FOC to initiate action to:

- Set aside a transfer of title to property; **or**
- Obtain a settlement for:
 - Payment in full; **or**
 - Periodic repayment

DEFINITION

Fraudulent transfer: Parting with anything that may be subject to ownership without receiving a reasonable equivalent value in exchange with actual intent to defraud any creditor of the debtor.

AGENCY POLICY**Pre-Fraudulent
Transfer Action**

Support Specialists (SS) and the Prosecuting Attorney's Office (PA) should:

1. Request custodial parents (CP) during the establishment process to provide any information about property held by the non-custodial parent (NCP).
2. Forward the information when the court order is secured to the FOC for use during future enforcement.
3. Advise the CP to contact the FOC office to request a lien if or when the arrearage exceeds the one-year arrearage threshold (See exhibit item 565X1, Guideline for Working with the Custodial Parent to Discover Present and Future Assets of the NCP).

Note: All SS, PA and FOC staff should advise CPs to monitor property held or coming to the possession of a NCP for lien or fraudulent transfer action.

Note: The FOC should monitor and seek liens when arrearages exceed the payer's obligation of one year's current support. For information on when and how to use the lien process, refer to the lien section of the manual.

*****Be proactive*****

*****One way to avoid fraudulent transfer actions is to try to perfect a lien while property is still in payer's possession*****

FRAUDULENT TRANSFER

Payees should be encouraged to report asset and transfer information to the FOC when support arrearages exist.

The FOC should encourage this information flow by fully investigating the information provided and giving appropriate feedback to the payee, or reporting agency. (See exhibit item 565X2, Sample Letter - Response to Asset and Transfer Information).

Individual payees are the most likely source of asset and transfer information. Real property records must be reviewed in the Register of Deeds office in the county in which the property is located.

ACTIONS BY FOC

If one years arrearage exists and there is reason to believe that the payer transferred title or ownership without fair consideration the FOC has the option, by statute, to seek a settlement or proceed to void a title.

1. The FOC enforcement worker should try to obtain a settlement first. The FOC can research the fraudulent transfer while attempting settlement by securing full payment of the arrearages.
2. Follow the procedures below.

3. Enter a history note about receipt of information from payee, other source (i.e., relative or neighbor) or an FOC discovery of information.

**Procedures for the
FOC Enforcement
Worker**

If one years arrearage exists and there is reason to believe that the payer transferred title or ownership without fair consideration complete the **Fraudulent Transfer Worksheet** (See exhibit item 565X3, Fraudulent Transfer Worksheet and Instructions).

Decision Points are at the:

- End of Enforcement History Analysis
- End of Property Value Assessment
- End of Transfer Analysis

Enter a note to case history on each decision.

Send the payee/referral source an update on actions to be taken. (See exhibit item 565X2, Sample Letter - Response to Asset and Transfer Information).

Enter a note to history on each decision.

Begin enforcement

- If the payer has more than one case, FOC must draft settlements and orders to insure payment is applied to a particular case. The payer must follow all the necessary procedures for allocation exceptions and terms of the order to insure the payment is correctly applied.
- Send communication to the Payer and Transferee (See exhibit item 565X4, Sample Letter - Letter to Payee; exhibit item 565X5, Sample Letter - Letter to Transferee) with copies to Payee

Enter a note to history on each decision.

- If no payment in full or settlement/order is obtained for periodic payment:

- Ask the court for an Order to Show Cause

Enter a note to case history on each decision.

- If no payment in full or settlement/order for periodic payment is obtained from the show cause process:

- Ask payee if they have any reluctance to proceeding under fraudulent transfer if the arrearage is due only to payee.

The payee may not wish or elect to proceed with the fraudulent transfer action because they have a relationship with the transferee or are concerned for personal safety.

- The FOC should certify the arrears. This is a formal written statement that the arrears as of the date of the statement are correct and enforceable.

Enter a note to history on each decision.

- FOC may elect to:
 - File a motion to take an action allowed by Section 7 of the Uniform Fraudulent Transfer Act. It may be advisable to request appointment of a Receiver. The action may have to be filed in a different county.

Enter a note to history on each decision (including possible actions in another county).

LEGAL REQUIREMENTS

Federal Law

42 USC 654(20)

42 USC 666(g)

State Law

Support and Parenting Time Enforcement Act provision:

MCL 552.624a Proceedings to set aside transfer of title

MCL 552.625a Lien; creation; effect

MCL 552.625b Lien: perfecting and recording; notice; procedure; enforcement; termination; disclosure of information

Revised Judicature Act

MCL 566.31 - 43 Uniform Fraudulent Transfer Act

MCL 600.4001 Attachment; exparte application; service of writ; jurisdiction

MCL 600.5813 Other personal actions

MCL 600.5241 Circuit Courts; jurisdiction; supervisory powers; examination; assignor and others; assignee; orders; circuit court commissioner

MCL600.5855 Fraudulent concealment of identity